

UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
Charlotte Division

FILED
U.S. Bankruptcy Court

MAY 22 2002

IN RE:

CARL LEWIS MOSACK,

Debtor.

SHRADER ASSET MANAGEMENT CO.;
CHARLES SHRADER; JILL REINER
SCOTT, TRUSTEE OF THE ROBIN
EVANS REINER TRUST; AND THE
JOHN PAUL REINER TRUST,

Plaintiffs,

vs.

COMBRACO INDUSTRIES, INC.;
CARL L. MOSACK, CARL C.
MOSACK, GLENN L. MOSACK,
INDIVIDUALLY AND AS
CO-TRUSTEE OF CLARA JANE POU
TRUST; CAROLE MOSACK LEE,
CAROLYN POU VANDERBERG,
INDIVIDUALLY AND AS CO-TRUSTEE
OF CLARA JANE POU TRUST AND
JAMES F. POU TRUST,

Defendants.

Case No. 02-3036 Geraldine T. Crockett, Clerk
Chapter 11 WDNC, Charlotte, NC/sag

JUDGEMENT ENTERED ON MAY 22 2002

Adversary Proceeding
No. 02-3052

ORDER DENYING PLAINTIFFS'
MOTIONS: 1) TO REMAND AND
2) TO AMEND COMPLAINT TO
DISMISS DEBTOR

This matter was before this Court for hearing on May 7, 2002 upon Plaintiff's Motions 1) for Voluntary Dismissal against Carl L. Mosack, and 2) to Remand this action to the North Carolina State Courts.

Having considered the matter, the undersigned believes that the Motions should be DENIED.

PROCEDURAL HISTORY/FINDINGS OF FACT

1. Carl Mosack ("Mosack") filed a chapter 11 case in this Court on February 1, 2002. Mosack is currently a debtor-in-possession under 11 U.S.C. § 1107.

2. The Plaintiffs are minority shareholders of Defendant Combraco Industries, Inc. ("Combraco"). Shortly before bankruptcy, the Plaintiffs filed this action in Mecklenburg County Superior Court. Their suit is a state law derivative action against Combraco and its officers and directors, including Mosack, its CEO.

3. The Plaintiffs' suit seeks recovery of damages from Mosack, averring that while acting as Combraco's CEO (and as a director), Mosack fraudulently obtained large, personal loans from his company and further caused Combraco to become liable for some of his other debts. The remaining defendants are officers/directors (and also relatives of Mosack) of Combraco who are alleged to have participated in the fraud and/or failed to prevent it in breach of their fiduciary duties.

4. On March 15, 2002, the Debtor removed this action to this Court. Since then, all of the defendants have answered Plaintiff's complaint. Three defendants have also filed cross-claims against Mosack, seeking contribution or indemnification of any liability

which they might have to the Plaintiffs. If allowed, the cross claims would constitute claims against this bankruptcy estate.

5. On April 10, 2002, the Plaintiff moved to dismiss Mosack from this action and then to remand the matter back to State Court. The defendants are happy for the Plaintiffs to dismiss Mosack but also oppose remand of the action.

6. Combraco remains in operation today. Combraco's stock is one of Mosack's principal assets.

7. There is at least one other adversary proceeding pending in this Court based upon similar facts and circumstances. In *Combraco Industries, Inc. v. Carl Mosack*, Adv. No. 02-3018, Combraco seeks recovery of the Debtor for monies loaned/ transferred to the Debtor, basically from the same transactions complained of in this action. The suit also seeks to except the debt from discharge under 11 U.S.C. § 523(a)(2) and (4).

8. At this point, the debtor is still within the exclusivity period for filing a plan. 11 U.S.C. § 1121.

CONCLUSIONS OF LAW

1. The Plaintiffs argue that upon dismissal of the debtor, this Court is divested of subject matter jurisdiction over the remainder of this action, and the suit should be remanded to State Court.

2. The Defendants oppose this relief arguing that:

- a. Independent subject matter jurisdiction exists in this Court due to the pendency of the defendants' cross claims against the Debtor (claims against his estate);
 - b. Independent jurisdiction exists over this action because Combraco's stock is estate property, and therefore matters affecting Combraco's corporate governance are at least "related to" this bankruptcy case and subject to this Court's jurisdiction;
 - c. Judicial economy dictates trying this matter in federal court. Remand of the action would result in multiple trials with this Court still having to try these same matters in Combraco's suit against the debtor and in the cross claims against the debtor;
 - d. Remand would create a substantial possibility of inconsistent verdicts and double liability to parties;
 - e. Remand would delay the administration of this bankruptcy case, while the state suit is pending; and
 - f. Subject matter jurisdiction, having already been acquired by this Court, cannot now be lost by Plaintiff's amendment of its Complaint or by a dismissal of Mosack.
3. The parties' arguments and supporting legal authorities are well-described in the briefs and will be repeated only insofar as is necessary to make this ruling. To the extent that a legal premise is adopted, those underlying arguments and authorities are as well.
4. This Court has jurisdiction over "all civil proceedings arising under, arising in or related to" a bankruptcy case, such as Mosack's. 28 U.S.C. § 1334(b); 28 U.S.C. § 157(a). Matters over which a bankruptcy court has jurisdiction include "core" proceedings (enumerated at 28 U.S.C. § 157(b)(2)) and "related to" matters. 28 U.S.C. § 157(c). A proceeding is "related to" if it could conceivably affect the administration of the debtor's estate.

Owens-Illinois, Inc. v. Rapic American Corp., 124 F.3d 619, 625 (4th Cir. 1997).

5. Subject matter jurisdiction over these matters lies in this Court. The Plaintiffs' claims against the Debtor, and the cross-claims of the other defendants against the Debtor are "core." 28 U.S.C. § 157(b)(2)(B). The Plaintiffs' claims against the other defendants, if proven, could also create additional (and potentially duplicate) liabilities to the debtor and his estate. They are "related to."

6. The Plaintiffs' attempt to now dismiss their claims against the debtor does not affect this Court's jurisdiction, especially since there exists independent grounds for jurisdiction (the cross claims) over these matters. See *Maseda v. Honda Motor Company*, 861 F.2d 1248, 1254 (11th Cir. 1988).

7. Remanding this action to State Court could create inconsistent results and the possibility of double liability for some parties, and a waste of resources.¹

8. If remand were granted, these matters would still have to be tried in this Court. Both this action and the Combraco actions allege Mosack engaged in fraud in operating his company and in obtaining loans from Combraco. The dates and events are basically the same.

¹ The Combraco suit being both a claim against the estate and a dischargeability action under Section 523(1)(2 & 4), must be tried in this forum. 11 U.S.C. § 523(c)(1).

9. This being so, if the Combraco suit and the cross claims against the Debtor are tried in this Court, and the claims of the Plaintiffs against the other defendants are tried in State Court, there is a very real prospect of inconsistent verdicts.

10. Further, the same matters would have to be tried before each court. These being rather involved factual issues, the result would be a substantial duplication of effort and expense to the parties, to say nothing of a waste of judicial resources.

11. This would also result in substantial time delays and have an adverse effect on the administration of this bankruptcy case. These claims against Mosack must be determined and dealt with in any Chapter 11 Plan. Similarly, if his reorganization fails, these claims have to be reached before a Chapter 7 distribution can be made.

12. If remand is granted, this bankruptcy case would have to await the outcome of that litigation, and then some. If the Plaintiffs were to prevail in State Court, only then could the cross claims be tried, in this Court. Potentially, the time involved would double.

13. Moreover, at some point, any resulting Combraco adversary proceeding verdict against the debtor would have to be squared with the resulting State Court verdict. The appropriate treatment of the resulting claims against the bankruptcy estate would have to then be determined. The process would be unwieldy, and time consuming, and this should be avoided.

14. Although this Court agrees with the Defendants' overall position, it should be noted that this Court disagrees with the contention that "related to" jurisdiction over this suit could exist simply because the Combraco stock is a significant asset of the debtor's estate. No doubt, this lawsuit could affect the value of the Combraco stock and timely reduce the value of the Debtor's shares. However, this possibility doesn't create bankruptcy jurisdiction over Combraco's corporate affairs.

15. Such a ruling would expand the jurisdiction of this Article I Court far beyond anything Congress (or the authors of the Constitution, for that matter) ever intended. It would also "Balkanize" the jurisdictional statutes in a way that is patently absurd.


16. For example, if the Defendants are correct, anytime an individual with three shares of Microsoft stock filed for Chapter 13, this bankruptcy court would have jurisdiction over that corporation's disputes (for example, an antitrust action) as well. No reasonable person would accept this premise. Additionally, if true, then what would happen when the next Microsoft shareholder files personal bankruptcy in a different court? Would both bankruptcy courts have the ability to direct the company's affairs? Obviously not.

17. Ordinarily, leave to amend a complaint and to dismiss a party is freely given. F.R.C.P. 41(a)(2). However, this Debtor occupies the central role in both of these actions, and as noted,

both actions affect his estate. Here the Debtor is a person in whose absence complete relief could not be accorded to the other parties under F.R.C.P. 19. If he were not already a party defendant to this suit, it would be necessary to add him. For this reason, the Plaintiffs' motion for leave to amend and to dismiss Carl Mosack is DENIED.

SO ORDERED.

This the 21st day of May, 2002.


United States Bankruptcy Judge